

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Alan Brevaldo,

Plaintiff,

v.

Case NO. 2:18-cv-446

Muskingum County Sheriff's
Office, et al.,

Defendants.

ORDER

This is a civil rights action under 42 U.S.C. §1983 brought by plaintiff, Alan Brevaldo, an Ohio inmate, against the Muskingum County Sheriff's Office and Captain Dave Suciu for alleged violations of his Eighth Amendment rights. Plaintiff alleged that while incarcerated at the Muskingum County Jail prior to his conviction in state court, he was assaulted on at least five occasions, and, with one exception, was denied medical treatment after these alleged assaults. Plaintiff's claims include the use of excessive force and inadequate medical treatment. Defendants moved to dismiss plaintiff's complaint for failure to state a claim. See Doc. 13.

On November 6, 2018, the magistrate judge issued a report and recommendation which recommended granting the motion to dismiss. The magistrate judge agreed with defendants' argument that the Muskingum County Sheriff's Office is not a legal entity capable of being sued, but construed the complaint as being against Muskingum County. The magistrate judge then concluded that the complaint did not allege facts sufficient to show that the alleged constitutional violations were the result of a custom or policy of the county, and recommended dismissal of the claims against the county without

prejudice. The magistrate judge further concluded that the complaint failed to allege a claim against defendant Suciu, as there were no allegations indicating that he had knowledge of or was personally involved in the alleged violations. The magistrate judge recommended that plaintiff's claims against defendant Suciu be dismissed without prejudice. The magistrate judge further recommended that plaintiff be afforded thirty days in which to file an amended complaint.

The report specifically advised the parties that objections to the report and recommendation were due within fourteen days, and that the failure to object to the report and recommendation "will result in a waiver of the right to have the district judge review the Report and Recommendation de novo, and also operates as a waiver of the right to appeal the decision of the District Court adopting the Report and Recommendation." Doc. 17, p. 10. The time period for filing objections to the report and recommendation has expired, and no objections to the report and recommendation have been filed.

The court agrees with the report and recommendation (Doc. 17), and it is hereby adopted. The defendants' motion to dismiss for failure to state a claim (Doc. 13) is granted, and plaintiff's action as originally filed (see Doc. 8) is dismissed without prejudice for failure to state a claim for which relief may be granted. Plaintiff has already filed an amended complaint, see Doc. 18, and leave to file that amended complaint is granted.

Date: November 28, 2018

s/James L. Graham
James L. Graham
United States District Judge